

indicia (30) representing and identifying penetrable apertures (20-26) disposed on the major surface and marking (20) a selected one of the apertures correlating the container with identity of the consumer." Continuing, the office Action states "The phrase 'penetrable apertures' as claimed is considered equivalent to a closed aperture and the closed apertures of Bartolucci are inherently capable of penetrating."

In response to the foregoing, Applicant has again carefully studied the Bartolucci reference and is still unable to find any teaching or suggestion of correlation with identity of the user (consumer). On the contrary the thrust of Bartolucci is to identify the contents of the container. Thus, in the introduction, Bartolucci states "It is an object of the present invention to provide a container with a selective indicator which visually indicates the identity of the one of a variety of possible contents in the container without requiring marking instrument or any other implement to effect the appropriate indication." (Underscoring added). This theme is continued through the specification, and, as mentioned above, Applicant has been unable to find any teaching or suggestion of marking to identify the consumer.

In the most recent Office Action, it is said that Applicant's arguments are not persuasive "because Bartolucci discloses a container having a visual indicator for identifying the contents of the container, for example, a cup of

coffee/beverage to go must mark [sic] to indicate whether the coffee is regular, black with sugar or with cream etc. upon requested [sic] by the consumer for such a specific cup of coffee. This is considered equivalent to the phrase 'correlation with identity of the consumer' as claimed."

Applicant has carefully studied the foregoing observation made by the Examiner and (1) finds the language difficult to understand and (2) to be a non-sequitur. Moreover, there is no basis given to support the contention that the marking of contents is correlated with personally identifying the consumer. That the contents are not correlated with the identity of the consumer can be observed from the fact that if two people (persons A and B) order a cup of black coffee, for example, Bertolucci's cups would be marked identically . . . and how could one tell from such marking which one of the two cups was intended for person A and which one for person B? Obviously such marking would not identify the consumer.

The Office Action continues "Applicant argues that 'the Bartolucci reference teaches away from apertures' is noted." It continues "This is not persuasive because there are no apertures cited in the claim." However, this is not accurate. Clauses (a) and (b) of the claim both contain "apertures" and read as follows:

"(a) disposing on said major surface an array of normally closed indicia-representing and identifying penetrable apertures;

and

(b) correlating said container with identity of said consumer by marking a selected one of said apertures."

(Underscoring added).

Applicant is unable to identify any basis for the Examiner's statement that "This is not persuasive because there are no apertures cited in the claim." As will be observed from reading clauses (a) and (b), apertures are specifically recited in both.

In view of the foregoing, it is respectfully requested that the rejection of Claim 25 be withdrawn and that the case be advanced to issue.

Respectfully,



Harold Levine

Dated: May 14, 2003

Attorney for Applicant
Registration Number 19,316
Bank of America Plano Tower, Suite 755
101 East Park Boulevard
Plano, Texas 75074
Tel: 972-398-6041
Fax: 972-398-6095

CERTIFICATE OF MAILING

I hereby certify that the above-noted paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on May 14, 2003.



Harold Levine